IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11584 of 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAJEGARBHAI KHIMAGARBHAI MEGHNATHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11584 of 2004

MR BD KARIA for Petitioner No. 1

MR MR MENGDEY AGP for Respondent No. 1-5

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 08/02/2005

ORAL JUDGEMENT

The only short question, which requires to be considered and adjudicated upon in this petition under Article 226 of the Constitution of India, is as to

whether the petitioner is entitled to the grant of second higher pay scale and if, what is the resultant benefit thereof.

2. The higher pay scale policy is introduced for the purpose of giving some incentive and encroachment in the employment for the simple reason, that in absence of lack of promotional avenues in the cadre. In order to earn benefit of higher pay scale in terms of the resolution of the State Government dated July 5, 1991 conditions prescribed therein are required to be fulfilled by the claimant-employee.

3. By virtue of the resolution of the Government dated 5/7/1991, the respondent-State has given direction to give higher pay-scale to those who have no chance of promotion or have less chance. It is further provided in the said resolution that the employees should be entitled to and granted first, second and third higher pay scale on completion of 9, 18 and 27 years of service respectively. By another resolution dated 16/8/1994, it has been modified the earlier resolution dated 5/7/1991 to some extend by the subsequent resolution. It has been further directed, that the second and third higher pay scale can be given only to those employees who have completed 18 and 27 years of service respectively after 1/6/1987 or the employees who have reached on the maximum pay scale in the corresponding cadre and stagnated atleast one year on the maximum stage of pay scale whichever is latter.

4. Let there be, at this stage a few material relevant facts emerging from the record of this petition, so as to, consider and decide the claim of the petitioner for higher pay scale. The birth date of the petitioner as per the service record has been 1/7/1943. He came to be promoted as Grass Depo Manager w.e.f. 13/4/1973. Subsequently, he came to be reverted on 13/9/1973 and was posted as Forest Guard where he joined on 20/9/1973. He was further promoted as Forester on 15/7/1974 and posted in Sasan Range. There he joined the duty on the same date.

5. The Conservator of Forests, Wildlife circle, Junagadh reduced the salary of the petitioner to Rs.330/- from Rs.428/- w.e.f. 10/9/1986 with permanent effect from the date of reinstatement on the duty i.e. on 10/9/1986. This penalty was questioned by filing an appeal successfully. Principal Chief Conservator of Forest, thereafter by order dated 2/3/1993 modified the order of the Conservator of Forests and directed that the

pay of the petitioner should be reduced from Rs.428/- to Rs.330/- for five years with temporary effect. In otherwise the permanent effect penalty imposed was modified. In pursuance of the said modified order the pay of the petitioner came to be fixed on the minimum pay-scale for the temporary basis for the period of five years from 10/9/1986 to 9/9/1991. Thereafter the pay of the petitioner came to be fixed at Rs.1410/- (Rs. 440/in the old scale). A corresponding old scale in the new revised pay scale of Rs.1200-2040 from 10/9/1986 (old pay scale of Rs.330-560).

6. The petitioner came to be awarded first higher pay on 10/9/1991 and, therefore, his basic came to be fixed at Rs.1640/-. It is clear from the affidavit-in-reply filed by the State, that while fixing the higher pay the notional increment for the disputed period had been considered and only thereafter his pay was fixed at Rs.1640/- on completion of 9 years of service.

7. Again there was a promotion of the petitioner. The petitioner came to be promoted to the post of Range Forest Officer in the pay-scale of Rs.1640-60-2600-75-2900. He joined on 24/2/1996 as Range Forest Officer, Jasadar. Thus, even before completion of 9 years in the first higher scale he was already promoted. At that time the basic pay upon promotion was fixed at Rs.1880/- in the pay-scale of Rs.1640-2900. The salary was then revised from old pay scale Rs.1640-2900 to new pay scale Rs.5500-175-9000. There is no dispute about the fact that the petitioner came to be retired upon superannuation on 31/7/2001 and at that time his basic pay was Rs.6725/- in the pay-scale of Rs.5500-9000. It is, therefore, very clear that the petitioner had been reached in that cadre its maximum stage of payscale in order to that he sustained or suffered the stagnation of pay-scale. It is in this context, the requisite condition to attract the benefits of the resolution dated 5/7/1991 and later on modified have not been complied with. It is in this context, the claim of the petitioner for higher pay-scale is not maintainable and sustainable for the simple reason. It does not fall within the ambit and the amplitude of the resolution of the Government dated 5/7/1991, under which, the claim is made. In the opinion of this Court, the petition deserves to be rejected at the admission stage.

8. Consequently, the petition shall stand rejected. However, parties are left with thereon costs. Notice shall stand discharged.

(DR. J. N. Bhatt, J.)

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